IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Crl.MC.No. 2764 of 2007()

CC.57/2007 of JUDL.MAGISTRATE OF FIRST CLASS, KOYILANDY
CRIME NO.425/06 OF KOYILANDY POLICE STATION

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PETITIONER:

MOHAMMED SWAHWAN, AGED 20 YEARS,
S/O.P.ABDUL LATHIF, NAZEEM HOUSE,
KOTTAKKAL P.O.(IRINGAL),
KOZHIKODE DISTRICT.

BY ADV. SRI.K.B.SURESH

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE CIRCLE INSPECTOR OF POLICE,
BALUSSERY, KOZHIKODE DISTRICT.

3. SHRI.MOHAMMED ARIF, S/O ABOOBACKER,
AGED 21 YEARS, DARUL AMAN HOUSE,
IRINGAL, KOTTAKKAL P.O., KOZHIKODE DISTRICT.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2764 of 2007

Dated this the 29th day of October 2007

O R D E R

The petitioner faces indictment in a prosecution under Sections 279, 338 and 304A I.P.C. The crux of the allegations against the petitioner is that on 28/6/2006 at about 12.30 p.m, he drove a scropio car No.KL-11 S 7575 along the public road in a very rash and negligent manner at an excessive speed and on account of such rashness, negligence and excessive speed, his vehicle overturned and hit against a motor cycle in which the deceased and the informant were travelling in the opposite direction. Both suffered injuries. The deceased succumbed to his injuries. The petitioner also had admittedly suffered injuries. The F.I statement was lodged by the pillion rider/injured. The rider of the motor cyle succumbed to his injuries. In the F.I.R, driver of the scorpio car (he is not named) is shown as the accused. In the course of investigation, the local police came to the conclusion that one Mohammed Arif, the third respondent herein, was the accused. He was brought on the array of the accused. After the death of the deceased, some complaints were

received that no proper investigation was being conducted and that the driver has been substituted. Though the petitioner was the actual driver, the third respondent was substituted as the accused. This, it was alleged, was because the petitioner had no driving licence and the third respondent Shri. Mohammed Arif did have a driving licence. The Superintendent of Police directed that investigation be conducted by Circle Inspector of Police, Balussery. He took over the investigation. In the course of investigation, he came to the conclusion that the petitioner, who was admittedly available in the vehicle, who had admittedly suffered an injury in the accident, was the person who was driving the vehicle at the relevant time. Accordingly, final report was filed. The third respondent was deleted from the array of accused. The petitioner was brought on the array. The petitioner had already entered appearance before the learned Magistrate. At this stage, the petitioner came to this court with the prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings.

2. The learned counsel for the petitioner raises two grounds. First of all, it is contended that arraying the petitioner

as an accused after deleting the third respondent from the array of accused is most unjustified and perverse. Secondly, it is contended that the allegation of rashness and negligence is not justified at all.

3. In the nature of the contentions raised, the learned Public Prosecutor was directed to produce the case diary before court. The case diary has been produced. A statement has also been filed on behalf of the police.

4. It is contended by the police that initially investigation was not properly done. In the course of further investigation, it was revealed that there was only one person in the scorpio car when it met with the accident and that was the petitioner herein who had suffered injury also. The third respondent, according to the police, was not present in the vehicle at all. He was elsewhere at the time of the accident. He had known about the accident only later. He had not suffered any injuries at all. It is the petitioner, the sole person available in the car, who suffered injuries. Eye witnesses have identified the petitioner to be the person who was available in the car and who had come out of the car with injuries. The totality of the circumstances point to the

culpable involvement of the petitioner and in these circumstances, the prayer to quash the proceedings against the petitioner is totally unjustified.

5. Secondly, it is contended that allegations of rashness and negligence are satisfactorily supported by the tell tale indications at the scene and the evidence available. The petitioner's vehicle was attempting to overtake another vehicle. Because of rashness, negligence and excessive speed, the vehicle had turned turtle and gone and hit against the motor cycle in which the deceased and the informant/injured were travelling. The vehicle driven by the petitioner was clearly on the wrong side of the road and the sequence of events clearly indicates the culpability of the driver of the scorpio car, that is the petitioner herein.

6. In the nature of the contentions, the learned Public Prosecutor was requested to place the case diary. I have gone through the case diary. At this early stage of investigation, I shall carefully not embark on a detailed discussion on the acceptability of the allegations or the credibility of the data collected. Suffice it to say that there appears to be

circumstances loaded against the petitioner. The eye witnesses have stated that there was only one person travelling in the vehicle and that was the driver. Admittedly, the petitioner was travelling in the vehicle. Admittedly, he had suffered injuries also. The only question is whether there was any other person in the vehicle. Whether such other person was driving the scorpio car and whether the third respondent is the said person. Having gone through the entire records, I find that the allegation raised by the investigating officer that the petitioner was the driver and that there was no other person in the car does not warrant any interference at this stage.

7. Coming to the denial of the allegations of rashness and negligence, one need only take note of the fact that the scorpio car had travelled on the wrong side of the road and had turned turtle and hit against the motor cycle coming in the opposite direction.

8. The initial conclusion of the first investigating officer that the third respondent was the driver of the scorpio car, it is seen, was subjected to close scrutiny and the subsequent investigating officer, a senior official, had come to the conclusion

that the third respondent was incorrectly and wrongly arrayed as an accused. It is not disputed now that the petitioner did not have driving licence and the said Mohammed Arif, the third respondent did have a driving licence.

9. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this court under Section 482 Cr.P.C. The disputed questions of fact cannot be attempted to resolved in proceedings under Section 482 Cr.P.C. Whether there was negligence on the part of the driver of the scorpio car and whether it was the petitioner or the third respondent who was driving the vehicle at the relevant time, according to me, must be decided by the learned Magistrate on the basis of evidence which is to be placed before the court. At the moment and with the available inputs, it would be hazardous and puerile to this court to resolve such serious disputed questions of fact. I need only mention that having considered the rival contentions and having perused the case diary in detail, I find no reason in this case for invoking the powers under Section 482 Cr.P.C to quash the indictment against the petitioner.

10. It is brought to my notice that a mistake has been committed in the preparation of the Criminal Miscellaneous Case. It would appear that it was assumed that Mohammed Arif who had suffered injuries was the third respondent herein. Admittedly, the third respondent is not the one who was treated at the hospital and it was the pillion rider of the motor cycle with the same name Arif who had suffered injuries and was treated at the hospital. Annexure A3 certificate relating to treatment does not refer to the treatment received by the third respondent; but it refers to the treatment received by the informant/pillion rider, Arif. The learned counsel for the petitioner makes that position clear.

11. In the result, this petition is dismissed. But I may hasten to observe that I have not intended to express any opinion whatsoever on merits of the rival contestants. I have chosen only to come to the conclusion that powers under Section 482 Cr.P.C do not deserve to be invoked to quash the proceedings against the petitioner. The petitioner's liberty to raise all appropriate and relevant contentions before the learned Magistrate shall remain unfettered by the dismissal of this

Criminal Miscellaneous Case.

12. The learned counsel for the petitioner submits that the petitioner is a student of Bangalore and if unnecessary insistence were made on the personal appearance of the petitioner on all dates of posting, that would cause very great hardship and loss to the petitioner. I find no reason why any criminal court should make such insistence on the unnecessary personal presence of the indictee. His presence need be insisted only on days when further progress of the case demands such presence. On other days, he can be represented by the counsel. No further, better or specific directions appear to be necessary.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007